

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MICHAEL M. NGRIME,

Plaintiff,

v.

**DOUGLAS COUNTY BOARD OF
COMMISSIONERS,**

Defendant.

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CASE NO. 8:07CV387

**MEMORANDUM
AND ORDER**

This matter is before the court on Defendant's Motion to Dismiss (Filing No. 7) and Plaintiff's Motion for Leave to File Amended Pleadings (Filing No. 9.) As set forth below, Plaintiff is permitted to amend his Complaint.

Plaintiff filed his Complaint in this matter on September 26, 2007, against one Defendant, the Douglas County Board of Commissioners. (Filing No. 1.) Defendant thereafter filed a Motion to Dismiss on the basis that it is not a proper defendant because it is not a political subdivision nor is it a "unit of local government." (Filing No. 8 at CM/ECF p. 4.) Plaintiff, realizing his mistake in not naming the proper defendant, responded to Defendant's Motion by requesting permission to file an amended complaint. (Filing No. 9.) Plaintiff states that he wishes to amend his Complaint and assert his claims against the entity "Douglas County" rather than "Douglas County Board of Commissioners." (*Id.*)

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend "shall be freely given when justice so requires." The applicable standard is summarized in *Foman v. Davis*, 371 U.S. 178, 182 (1962), which states:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits. In the absence of any apparent reason-such as undue delay, bad faith or dilatory motive on the part of the movant, ... undue

prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be “freely given.”

Id. Further, a motion to amend the complaint “render[s] moot” a pending motion to dismiss.

Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir. 2002).

Here, Plaintiff filed his Motion to Amend approximately two months after the filing of his Complaint. No discovery had occurred and the only activity in this matter during that time was the filing of Defendant’s Motion to Dismiss. The only amendment sought is a substitution of the Defendant. In light of the *Foman* standard, the court finds that Plaintiff’s amendment would not be futile and is therefore permitted. Plaintiff shall have 30 days in which to file an amended complaint naming the proper party, Douglas County, Nebraska. On the court’s own motion, Plaintiff shall then have an additional 30 days in which to serve Douglas County, Nebraska, with summons and a copy of the amended complaint.

In light of Plaintiff’s anticipated filing of an amended complaint, Defendant’s Motion to Dismiss (Filing No. 7) is denied as moot. However, the Motion to Dismiss may be renewed in the event that Plaintiff does not name the proper party or effect service of process in accordance with this Memorandum and Order.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Motion for Leave to File Amended Pleadings (Filing No. 9) is granted. Plaintiff shall have until May 2, 2008, to file an amended complaint naming Douglas County, Nebraska as the Defendant in this matter;
2. Plaintiff shall have until June 2, 2008, in which to serve the newly-named Defendant, Douglas County, Nebraska, with summons and a copy of the amended complaint;
3. Defendant’s Motion to Dismiss (Filing No. 7) is denied as moot, without prejudice to reassertion after the filing of an amended complaint in accordance with this Memorandum and Order; and

4. The Clerk of the court is directed to set two separate pro se case management deadlines in this matter with the following text: May 2, 2008: deadline to file amended complaint and June 2, 2008: deadline for service on Douglas County, Nebraska.

DATED this 2nd day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge